

State of Hawaii
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement
Honolulu, Hawaii

June 23, 2006

Board of Land and
Natural Resources
Honolulu, Hawaii

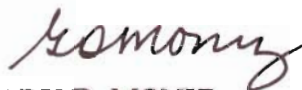
RE: Request Board Approval to Enter Into a Joint Enforcement Agreement between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, and the National Marine Fisheries Service, Office of Law Enforcement.

The purpose of this agreement is to facilitate the operations, administration, and funding for DOCARE to enforce Federal laws, and regulations under the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act of 1973, the Marine Mammal Protection Act 1972 and the National Marine Sanctuaries Act.

RECOMMENDATION:

The Division of Conservation and Resources Enforcement requests approval of this *DRAFT* Joint Enforcement Agreement and asks that the Chairperson be authorized to approve the finalized agreement after review and approval as to form by the Office of the Attorney General. Changes recommended to DLNR by the Attorney General's Office would be incorporated into the final document in order to meet all State requirements.

Respectfully submitted,



GARY D. MONIZ
Enforcement Chief

APPROVED FOR SUBMITTAL:



PETER T. YOUNG, Chairperson
Board of Land & Natural Resources

2006 JOINT ENFORCEMENT AGREEMENT

Between
The State of Hawaii
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement
And
The U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office for Law Enforcement

I. PURPOSE AND SCOPE

The purpose of this Joint Enforcement Agreement (JEA) between the U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), Office for Law Enforcement (OLE) and the State of Hawaii is to facilitate the operations, administration, and funding of the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (DOCARE) to enforce Federal laws and regulations under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §1801, et seq.)(Magnuson-Stevens Act), the Endangered Species Act of 1973 (16 U.S.C. §1531, et seq.)(ESA), the Lacey Act Amendments of 1981 (U.S.C. § 3371 et seq.)(Lacey Act), and the National Marine Sanctuaries Act (16 U.S.C. §1431, et seq.)(NMSA).

II. BACKGROUND

The NMFS/OLE has had a long-term relationship with DOCARE, beginning in August 1992, with the signing of a Cooperative Enforcement Agreement. That agreement was updated in 2001.

This JEA provides a framework plan for the enforcement of Federal and State fisheries regulations offshore of the State of Hawaii, between the NMFS/OLE and DOCARE. Central to this JEA is the prevention and detection of violations by federally deputized officers from DOCARE. Key features of this jointly administered plan include an increased overt presence by DOCARE to achieve higher levels of voluntary compliance with Federal regulations, the issuance of Federal funds by the NMFS/OLE, and the processing through resolution of certain specified cases, which could be handled under either Federal or State law, or by the State under State law.

2006 JOINT ENFORCEMENT AGREEMENT

III. AUTHORITY

DOC/NOAA has authority to protect the Nation's fisheries and engage in fishery conservation and management activities under the Magnuson-Stevens Fishery Conservation Management Act (Magnuson-Stevens Act) generally. DOC/NOAA is further authorized, under 16 U.S.C. § 1861(a) to enforce provisions of the Magnuson-Stevens Act and, in conducting such enforcement, to utilize the personnel, services, equipment (including aircraft and vessels), and facilities of such State agencies on a reimbursable basis or otherwise.

DOC/NOAA has authority to protect the Nation's threatened and endangered species and engage in their conservation under the Endangered Species Act (ESA) generally. DOC/NOAA is further authorized, under 16 U.S.C. §1540(e)(1) to enforce provisions of the ESA and, in conducting such enforcement, to utilize the personnel, services, and facilities of such State agencies with or without reimbursement.

DOC/NOAA has authority to prevent illegal trafficking of fish and wildlife taken and/or possessed in violation of state, Federal, Indian tribal, and foreign laws and engage in conservation and management activities under the Lacey Act Amendment (Lacey Act) generally. DOC/NOAA is further authorized, under 16 U.S.C. §3375(a) to enforce provisions of the Lacey Act and, in conducting such enforcement, to utilize the personnel, services, and facilities of such state agencies with or without reimbursement.

DOC/NOAA has authority to protect the Nation's national marine sanctuaries and engage in conservation and management activities under the National Marine Sanctuaries Act (NMSA) generally. DOC/NOAA is further authorized, under 16 U.S.C. §1437(h), to enforce provisions of the NMSA and, in conducting such enforcement, to utilize the personnel, services, and facilities of such State agencies on a reimbursable basis or otherwise.

The State of Hawaii has authority to conduct the activities contemplated by this agreement under the Hawaii Revised Statutes Section 199-3(a)(3), which authorizes DLNR to enter into cooperative agreements with federal agencies to promote wildlife management, conservation, and research.

IV. TERMS

All enforcement activities under this JEA shall be conducted in compliance with the CEA between the NMFS and DOC ARE effective November 2001. Section I of the CEA provides for the "Deputization of State/Territory officers as Federal Enforcement Agents." Said CEA further states that:

All Officers, while acting as Federal law enforcement agents under this agreement, shall possess the powers and authorities set forth in the MISFCMA, ESA, MMPA, and the Lacey Act . . .

2006 JOINT ENFORCEMENT AGREEMENT

In Section III A, the CEA states that:

To meet its law enforcement responsibilities under any of the Acts listed in this agreement, and consistent with the provisions of these Acts, NMFS/OLE may execute contracts and other agreements with the State to provide funds in exchange for the use or services of the State's law enforcement personnel, vessels, aircraft, vehicles and/or other equipment. These contracts and other agreements shall be negotiated separate from this Agreement.

DOCARE agrees to provide, on a reimbursable basis and/or otherwise, the following personnel, services, equipment, and facilities:

1. Trained, equipped, and federally deputized officers to patrol offshore, near shore, and dockside in DOCARE patrol boats and vehicles as defined in the Operations Plan, Section 2.A. Current enforcement capabilities (attached). Their focus will be to determine compliance with Federal fishing regulations and other Federal laws and regulations as specified in the Operations Plan, Section 2.

2. DOCARE will provide 735 hours under this agreement. The minimum hours of patrol time and officers deployed for each patrol are specified in the Operations Plan, Section 2.C. Operational considerations will dictate the number of officers deployed for each patrol. DOCARE will be available to provide these vessels with crews for operations requested by the NMFS/OLE.

- A. The ability of DOCARE to operate within the Operations Plan will be subject to limitations which include but are not limited to: weather conditions, mechanical problems, compliance with the Federal Fair Labor and Standards Act, and emergency deployment due to natural disasters or civil disturbances.

- B. During these patrols, DOCARE officers will log all contacts made with fishing vessels. Boarding forms will include date of check, location of boarding, vessel name and/or registration/documentation number, vessel captain, and number of persons onboard. The boarding forms will be available to the NMFS/OLE for purposes of determining compliance of the user groups with Federal fishing regulations and to monitor DOCARE performance under the terms of this JEA.

3. DOCARE will purchase the following equipment/services for use under this agreement:

- A. Travel related costs for DOCARE officers to attend initial JEA training

2006 JOINT ENFORCEMENT AGREEMENT

4.
 - A. DOCARE officers will enforce Federal fisheries laws guided by the jointly agreed upon priorities as outlined in the Operations Plan, Section 1 and Section 2. Those cases whose resolution will be handled by the State, e.g., by administrative, civil and/or criminal prosecution, restitution, or otherwise, are referenced in paragraph 6 below and further outlined in the Operations Plan, Section 3.A.
 - B. Through the contacts provided in the Operations Plan, Section 3.F., DOCARE will immediately contact the NMFS/OLE upon the detection of any case involving Federal laws under which NMFS/OLE has authority, including but not limited to the Magnuson-Stevens Act, the Endangered Species Act, the Lacey Act, the Marine Mammal Protection Act, and the National Marine Sanctuaries Act, and upon the documentation of those cases outlined in the Operations Plan, Section 3.E. that involve aggravating circumstances.
5.
 - A. DOCARE will handle as appropriate through resolution, e.g., by administrative, civil and/or criminal prosecution, restitution, or otherwise, in its court system, or in any subordinate court or administrative system with appropriate jurisdiction within the State, all cases which may be handled under State law only, and certain cases which may be handled under either Federal or State law, whether such cases originate in State or Federal waters, as specified in the Operations Plan Section 3.B. The parties anticipate that these types of cases comprise many, if not most, of the violations that will be detected.
 - B. Additionally, DOCARE will handle as appropriate all cases which do not comply with Federal procedures and guidelines, practices, laws, and regulations, which are outlined in the Operations Plan, Section 3.C.
 - C. The State of Hawaii hereby certifies that it has the authority and jurisdiction to so handle such cases as outlined in paragraphs 6 A and B, below.
 - D. Upon contact/notification as outlined in paragraph 5 B above, a determination of whether the State or NMFS/OLE will handle the case will be made jointly with the regional NOAA General Counsel for Enforcement and Litigation and the appropriate State attorney.
6. For those cases involving violations of Federal fisheries or protected resources related laws (ie., ESA, NMSA, and the Lacey Act) detected by DOCARE officers that will be prosecuted federally, whether administratively, civilly, or criminally, the basic procedures are as follows:

2006 JOINT ENFORCEMENT AGREEMENT

A. The cases will be documented using DOCARE forms or other forms as jointly agreed to by DOCARE and the NMFS/OLE and then provided to the NMFS/OLE at the earliest practical date and within statutory and regulatory guidelines as outlined in the Operations Plan Section 3.G.1. The NMFS/OLE will accept for review those cases which are properly prepared for Federal action and meet all applicable Federal procedures and guidelines, practices, law, and regulations as outlined in the Operations Plan, Section 3.G.1.

B. To the extent agreed upon in advance or as requested by the NMFS/OLE Special Agent(s), DOCARE officers will conduct follow-up investigations of any Federal violation forwarded for Federal action. These investigations may include obtaining documents, researching records, conducting surveillance and conducting interviews. DOCARE will work closely with the local NMFS/OLE Special Agent(s) to ensure a good flow of information and to address current areas of concern by the NMFS/OLE and/or the Federal administrative, civil and/or criminal attorney(s).

C. When necessary, DOCARE officers will be made available to testify in Federal administrative and judicial proceedings. The NMFS/OLE will pay the approved cost of travel for all DOCARE officers to assist the NMFS/OLE in any Federal administrative or judicial proceeding.

7. DOCARE will incorporate JEA funding to develop and distribute promotional and educational material for their community oriented policing project. The materials will inform the public of the problems the various living marine resources are encountering. It will also inform the public of the importance of reporting suspected abuses and possible violations of existing state and Federal laws and regulations. DOCARE officers will distribute the material at tournaments, public appearances, sportsmen and boat shows, fishing tackle shops, and through their programs.

8. DOCARE will incorporate JEA funding to supervise, plan, implement, monitor, and develop required documentation for this JEA.

9. DOCARE will cooperate with the NMFS/OLE to produce a complete annual report of the JEA. The first report will be produced and published to cover a one year time period from the effective date of this JEA. JEA funds will be utilized to develop annual reports, quarterly reports, provide monthly summaries, and invoices for activities.

10. The points of contact for the NMFS/OLE and for DOCARE for all issues arising in conjunction with the performance of this JEA are specified in the Operations Plan, Section 3.F.

2006 JOINT ENFORCEMENT AGREEMENT

V. MEASUREMENT OF PERFORMANCE OBJECTIVES

DOCARE will provide monthly summaries of their vessel and dockside patrol hour activities using the currently formulated spreadsheet showing dates, time, name of vessel contacted, registration number of vessel contacted, vessel operator name, whether it was a dockside or at sea boarding, and the location of the boarding. In addition, an annual report will be produced, published, and forwarded to NMFS/OLE within 90 days after the expiration of this Agreement.

VI. FUNDING

The NMFS/OLE transfers \$60,000.00 to DOCARE. All responsibilities under this JEA are subject to the availability of appropriated funds. DOCARE will provide copies of proof of purchase documentation to NMFS/OLE for direct purchases agreed to in Art. IV, Section 3. Such proof of purchase will be provided in the monthly report immediately following the purchase. Funds transferred pursuant to this JEA are available until September 30, 2008.

VII. PERIOD

This JEA shall become effective on the date when signed by all parties. It will expire one year from the effective date. It may be terminated before that date by mutual agreement of the parties. Any funds not obligated by DOCARE before expiration or termination of this JEA must be returned to the NMFS/OLE with the exception that, prior to the JEA's expiration (but not termination), the NMFS/OLE may, at its sole discretion, allow DOCARE to retain amounts no more than 10% of the total amount of this JEA funding to carry over to any subsequent JEA that the NMFS/OLE is actively contemplating at the time of expiration. With respect to any such funds NMFS/OLE allows DOCARE to carry over to a subsequent JEA, DOCARE must, within nine months of NMFS/OLE informing DOCARE that they may be carried over, do one of the following: (1) inform NMFS/OLE whether DOCARE shall obligate the funds within their period of availability; or (2) return the funds promptly to NMFS/OLE if DOCARE will not obligate them within their period of availability.

VIII. MODIFICATION AND CANCELLATION

The provisions of this JEA may be modified by amendment subject to written agreement of both parties. Modifications relating to increased funding require a detailed account.

2006 JOINT ENFORCEMENT AGREEMENT

Within the rate structure attached, and in furtherance of the overall goal to maximize the efficiency of enforcement operations, both parties to this JEA recognize that the DOCARE may have to increase the amount of hours expended in one category and correspondingly decrease operations in another category. It may, for example, be necessary to increase offshore patrol hours and decrease dockside hours to properly address a particular poaching threat from violators determined to steal the living marine resources this JEA is dedicated to protect. Estimates for the amount of legal assistance may increase or decrease. This JEA recognizes and encourages that flexibility.

IX. OTHER PROVISIONS

Nothing herein is intended to conflict with any current DOC, NOAA, NMFS, or State directive. If any provisions of this JEA are inconsistent with such directives, those portions of this JEA that are inconsistent shall be invalid, but the remaining terms and conditions shall remain in full force and effect. At the first opportunity for review of the JEA, all necessary changes will be accomplished by either an amendment to this JEA or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

Should disagreements arise on the interpretation of the provisions of this JEA, or amendments, and/or revisions thereto, that cannot be resolved at the operating unit level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

Dale J. Jones
Chief, Office for Law Enforcement
National Marine Fisheries Service
National Oceanic & Atmospheric Administration

Date

Peter T. Young
Chairperson, Board of Land and Natural Resources
State of Hawaii

Date

2006 JOINT ENFORCEMENT AGREEMENT

APPROVAL TO FORM:

Deputy Attorney General, State of Hawaii

Date